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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,863	12/14/2001	Christopher Dale Fenwick	16161	6252

23556 7590 08/28/2003

KIMBERLY-CLARK WORLDWIDE, INC.
401 NORTH LAKE STREET
NEENAH, WI 54956

EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 08/28/2003

3

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/022,863

Applicant(s)

FENWICK ET AL.

Examiner

Jacqueline F Stephens

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3. 6) ☐ Other:

DETAILED ACTION

Specification

1. The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5, 8, 9, and 13-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Periera USPN 6087551.

As to claim 1, Periera discloses a nonwoven material for personal care products comprising a mixture of synthetic fibers of different denier (Abstract), wherein a first denier fiber has an average denier of 2 (col. 2, lines 41-42), which meets the claim limitation 'of 2 or less'. Periera discloses a second fiber having an average denier between 4 and 15 (col. 2, lines 43-45), therefore, with a first fiber having an average

Art Unit: 3761

denier at 2, and a second fiber having an average denier of 5 up to 15, Periera discloses the first fiber has an average denier at least 3 denier less than a second fiber. Periera further discloses the material has a basis weight between 30 and 200 gsm (col. 4, lines 26-30).

As to claim 2, Periera discloses the nonwoven material of claim 1 wherein the second denier fiber has a denier between 6 and 15 (col. 2, lines 43-45).

As to claim 3, Periera discloses the nonwoven material of claim 1 wherein the first denier fiber is present in an amount between 25 and 75 weight percent and the second denier fiber is present in an amount between 75 and 25 weight percent (col. 2, lines 45-54).

As to claim 4, Periera discloses the nonwoven material of claim 1 wherein the first denier fiber is present in an amount between 40 and 60 weight percent and the second denier fiber is present in an amount between 60 and 40 weight percent (col. 2, lines 45-54).

As to claim 5, Periera discloses the nonwoven material of claim 1 wherein the first denier fiber is present in an amount of about 60 weight percent and the second denier fiber is present in an amount of about 40 weight percent (col. 2, lines 45-54).

As to claim 8, Periera discloses the nonwoven material of claim 1 wherein the second denier fiber is made from a polyester (col. 2, lines 55-59).

As to claim 9, Periera discloses the nonwoven material of claim 1 wherein the fibers have a hydrophilic treatment added to the surface of the fibers (col. 3, lines 58-65).

As to claim 13, Periera discloses a diaper comprising the material of claim 1 (col. 4, lines 45-47).

As to claim 14, Periera discloses a training pant comprising the material of claim 1 (col. 6, lines 44-52).

As to claim 15, Periera discloses an incontinence product comprising the material of claim 1 (col. 6, lines 44-52).

As to claim 16, Periera discloses a bandage comprising the material of claim 1 (col. 6, lines 44-52).

As to claim 17, Periera discloses a sanitary napkin comprising the material of claim 1 (col. 4, lines 45-47).

4. Claims 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Gryskiewicz et al. USPN 5913851.

As to claim 18, Gryskiewicz discloses a surge material for personal care products comprising between 40 and 60 weight percent of a first fiber having a first average denier and between 60 and 40 weight percent of a second fiber having a second average denier, wherein the first denier is at least 3 denier less than the second denier, the second denier is between 4 and 15, and wherein the material has a basis weight between 30 and 200 gsm (col. 11, lines 40-58).

As to claim 19, Gryskiewicz discloses the nonwoven material of claim 18 wherein the first denier fiber (fiber having 3 denier) is a bicomponent fiber (col. 11, lines 50-54).

As to claim 20, Gryskiewicz discloses the nonwoven material of claim 18 wherein the second denier fiber is made from a polyester (col. 11, line 55).

As to claim 21, Gryskiewicz discloses a surge material for personal care products comprising about 60 weight percent of a first fiber in a bicomponent sheath/core configuration, made from polymers selected of the group consisting of polyethylene/polypropylene, polyethylene/polyethylene terephthalate and co-polyethylene terephthalate/polyethylene terephthalate and having a first average denier, and about 40 weight percent of a polyester second fiber having a average second

Art Unit: 3761

denier, wherein the first denier is at least 3 denier less than the second denier, the second denier is between 4 and 15, and wherein the material has a basis weight between 30 and 200 gsm (col. 11, lines 40-58).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Periera in view of Zehner et al. USPN 5366453.

Art Unit: 3761

Periera discloses the nonwoven material may comprise combinations of polypropylene, polyester, and polyethylene fibers. However, Periera does not specifically disclose the nonwoven material comprises a bicomponent fiber. Zehner discloses a fluid-pervious cover layer comprising bicomponent fibers in a sheath core arrangement for the benefit of providing a soft, gentle surface for placement against the skin of a wearer (Zehner col. 8, lines 20-51). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the nonwoven of Periera to include a first (low) denier bicomponent fiber for the benefits disclosed in Zehner.

As to claim 6, Periera/Zehner discloses the nonwoven material of claim 1 wherein the first (low) denier fiber is a bicomponent fiber (Zehner col. 8, lines 20-51).

As to claim 7, Periera/Zehner discloses the nonwoven material of claim 6 wherein the first (low) denier fiber is a sheath/core bicomponent fiber selected of the group consisting of polyethylene/polypropylene, polyethylene/polyethylene terephthalate and co-polyethylene terephthalate/polyethylene terephthalate bicomponent fibers (Zehner col. 8, lines 20-51).

8. Claims 1 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gryskiewicz et al. USPN 5913851.

Art Unit: 3761

As to claim 1, Gryskiewicz discloses the present invention substantially as claimed. However, Gryskiewicz does not disclose the first denier fiber has an average denier of 2 or less. Although Gryskiewicz as described in col. 11, lines 40-58 does not give the claimed denier for the first denier fiber, the applicant fails to disclose that the 2 or less is such a critical value or gives unexpected results so to exclude a denier of 3, which still provides a soft fiber. In the absence of any new or unexpected results, discovering the optimum or workable ranges involves only routine skill in the art.

Gryskiewicz discloses a nonwoven material for personal care products comprising a mixture of synthetic fibers of different denier, wherein a first denier fiber has an average denier of 3 and a second fiber has an average denier of 6 (col. 11, lines 40-58), which meets the limitation of between 4 and 15. Therefore, the first fiber has an average denier at least 3 denier less than a second fiber. Gryskiewicz further discloses the material has a basis weight between 30 and 200 gsm (col. 11, line 51).

As to claims 10-12, regarding the absorbent capacity and the examiner's interpretation of the test and performance characteristics of the instant apparatus claims, when the structure recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions are presumed to be inherent (MPEP 2112-2112.01). A *prima facie* case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim except a property or function and the examiner can not determine whether or not the reference inherently possesses properties which anticipate or render obvious the

Art Unit: 3761

claimed invention but has basis for shifting the burden of proof as in *In re Fitzgerald*, 619 F.2d 67, 70 205 USPQ 594, 596 (CCPA 1980). In the present case, the reference has met the structural requirements of claim 1 in that Gryskiewicz provides the claimed multi-denier layer comprising the claimed fiber composition used in a surge material. Therefore, the TEWL and intake rate is inherently comparable to the present invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703)308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Jacqueline F Stephens
Examiner
Art Unit 3761



August 23, 2003



WEILUN LO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700